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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DEMETRIS CORNELIOUS, Defendant and Appellant.	B289455 (Los Angeles County Super. Ct. No. TA142614)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed and remand for further proceedings.

Patrick J. Hoynoski, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury convicted defendant of carjacking (Pen. Code, § 215, subd. (a)[1]) and found true the allegation that he personally used a firearm (§ 12022.53, subd. (b)). Defendant admitted a prior robbery conviction (§ 211) for purposes of allegations under the Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12); section 667, subdivision (a)(1); and section 667.5, subdivision (b)[2]; and two prior taking a vehicle convictions (Veh. Code, § 10851, subd. (a)) for purposes of allegations under section 667.5, subdivision (b). The trial court sentenced defendant to 25 years in state prison consisting of the middle term of five years doubled under the Three Strikes law for the carjacking conviction, 10 years for the personal use of a firearm finding, and five years for the prior violent felony conviction admission. The trial court struck the one-year sentence for his prior prison term.

On appeal, defendant contends the trial court erred when it denied his *Batson*/*Wheeler*[3] motion and that we must remand the matter to the trial court for it to exercise its section 1385 discretion whether to strike the section 667, subdivision (a)(1) five-year sentence pursuant to Senate Bill 1393. We affirm the conviction and remand the matter to the trial court for it to

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1 All further statutory citations are to the Penal Code unless otherwise noted.

2 The robbery conviction was also alleged under section 667.5, subdivision (a). In taking defendant's admissions, the trial court did not refer to section 667.5, subdivision (a).

3 *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

exercise its section 1385 discretion whether to strike defendant's section 667, subdivision (a)(1) enhancement.

II. DISCUSSION[4]

A. *Defendant's* Batson/Wheeler *Motion*

Defendant, who is Black, brought a *Batson*/*Wheeler* motion after the prosecutor used a peremptory challenge to excuse Prospective Juror No. 19, who also is Black. The trial court denied the motion. We affirm because, even if defendant made a prima facie case that the prosecutor improperly used a peremptory challenge and thus triggered a further inquiry, the prosecutor offered an inherently plausible nondiscriminatory reason for excusing the prospective juror that was supported by the record.

1. Background

During voir dire, Prospective Juror No. 19 stated that he was from Redondo Beach, single, and unemployed. In the past, he had worked as a teacher and in online advertising. He was then looking for employment in internet insurance. Prospective Juror No. 19 had served on a jury in a civil and a criminal case. Both juries reached verdicts.

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[4] Because the issues on appeal do not concern the facts of defendant's underlying offense and personal gun use, we dispense with a recitation of those facts. We set forth below relevant facts from the jury voir dire relevant to defendant's *Batson*/*Wheeler* motion.

Prospective Juror No. 19 had been the victim of fraud, burglary, and robbery. The robbery occurred seven years before trial and did not involve a weapon. He reported the crime to the police, a suspect was arrested, and he did not testify in the matter. Nothing about any of the crimes he suffered would prevent him from being fair in this case.

The trial court then engaged Prospective Juror No. 19 in a discussion about his earlier response that someone close to him had been arrested or charged with a crime as follows:

"The Court: . . . [W]ho do you know that's been arrested or charged?

"Prospective Juror No. 19: Multiple family members.

"The Court: And what kind of crimes have they been charged with?

"Prospective Juror No. 19: From fraud through possession.

"The Court: Did you go to any of the cases for any of your family members?

"Prospective Juror No. 19: Yes.

'The Court: Do you think any of them were treated unfairly?

"Prospective Juror No. 19: Sometimes, yes.

"The Court: Who treated them unfairly?

"Prospective Juror No. 19: Ultimately, the system in certain ways.

"The Court: How so?

"Prospective Juror No. 19: Allegations in terms of how statements were either, we felt, twisted or not believed.

"The Court: So who do you think—people in law enforcement twisted them? Or do you think that the people like civilians that were giving statements twisted it?

"Prospective Juror No. 19: It wasn't just law enforcement. We felt it was more just the system, in general. Not against the civilians. Accusations were made, and it turned out ultimately not to be true, but a long story.

"The Court: So you're going to be sitting here, and we're in the system, for lack of a better term.

"Prospective Juror No. 19: Uh-huh. Right.

"The Court: Do you think that you could put aside your feelings about what happened with the various family members and look at the evidence in a fair and impartial way in this case?

"Prospective Juror No. 19: I'm open, yes."

The trial court also asked Prospective Juror No. 19 about his statement that he had family or friends in law enforcement. Prospective Juror No. 19 responded that he was "[v]ery close to an ex[-]girlfriend who was recently—she was a sergeant but had to retire due to hostile work environment." She had filed a claim with respect to the hostile environment. The prospective juror stated that his former girlfriend's experience did not impact at all his view of law enforcement personnel. He could "separate what she went through."

The prosecutor later moved to excuse Prospective Juror No. 19 for cause. She said, "I did note he said that his 211 arrest, he felt—not arrest—211 as a victim, there was an arrest made, and that part was fair, but in relation to his family members, he said that the whole system was unfair and kept noting the whole system wasn't fair." The trial court denied that challenge because the prospective juror "ultimately . . . said he could be fair."

The prosecutor then used a peremptory challenge to excuse Prospective Juror No. 19. Defense counsel asked for a sidebar

conference at which he made a *Batson*/*Wheeler* motion with respect to that peremptory challenge.

Defense counsel argued that Prospective Juror No. 19 said he had been on civil and criminal juries that had reached verdicts and was a Black male. The trial court denied the motion, finding that defendant had not shown a prima facie case. The trial court explained, "Just because [he is] a Black male, though, I don't see a pattern or anything. And I will note that he indicated previously his family members had been, you know, mistreated by the system."

In case its prima facie case ruling was incorrect, the trial court asked the prosecutor to state her reasons for excusing Prospective Juror No. 19. She responded, "For those very reasons, your Honor. He was stating earlier, as I noted earlier in my request for cause, he was a victim of [a] 211, and he stated that he was treated fairly there; however, his family members that have been arrested for various things, from fraud through possession, he stated he attended those court hearings, he felt the system was unfair, he felt that the whole system was unfair, that the statements were twisted, that they accused—accusations actually turned out to be not true. [¶] From that, I felt that his feelings towards the system, as a whole, would carry over if he were to serve as a juror."

The trial court stated, "Okay. All right. If I had found a prim[a] facie case, I would have denied it, because it seems there's a race-neutral basis for the exclusion."

Prospective Juror No. 20 replaced Prospective Juror No. 19. Defense counsel and the prosecutor then accepted the jury panel as constituted.

2. Analysis

The state and federal Constitutions prohibit a party from using peremptory challenges to exclude prospective jurors based on race. (*People v. Gutierrez* (2017) 2 Cal.5th 1150, 1157 (*Gutierrez*), citing *Batson, supra,* 476 U.S. 79 and *Wheeler, supra,* 22 Cal.3d at pp. 276-277.) "The exclusion by peremptory challenge of a single juror on the basis of race or ethnicity is an error of constitutional magnitude requiring reversal." (*People v. Silva* (2001) 25 Cal.4th 345, 386.)

A trial court employs a three-step process for resolving *Batson*/*Wheeler* motions. First, the moving party "must demonstrate a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." (*Gutierrez, supra,* 2 Cal.5th at p. 1158.) Second, if the moving party demonstrates a prima facie case, the opponent of the motion must then provide an adequate nondiscriminatory reason for the challenge. (*Ibid.*) "Third, if the opponent indeed tenders a neutral explanation, the trial court must decide whether the movant has proven purposeful discrimination. [Citation.]" (*Ibid.*)

At the third step, "the credibility of the explanation becomes pertinent. To assess credibility, the court may consider, '"among other factors, the prosecutor's demeanor; . . . how reasonable, or how improbable, the explanations are; and . . . whether the proffered rationale has some basis in accepted trial strategy."' [Citation.] To satisfy herself that an explanation is genuine, the presiding judge must make 'a sincere and reasoned attempt' to evaluate the prosecutor's justification, with consideration of the circumstances of the case known at that

time, her knowledge of trial techniques, and her observations of the prosecutor's examination of panelists and exercise of for-cause and peremptory challenges. [Citation.]" (*Gutierrez, supra,* 2 Cal.5th at pp. 1158-1159.)

"We recognize that the trial court enjoys a relative advantage vis-à-vis reviewing courts, for it draws on its contemporaneous observations when assessing a prosecutor's credibility. [Citation.]" (*Gutierrez, supra,* 2 Cal.5th at p. 1159.) Thus, we defer to a trial court credibility determinations ""'in the absence of exceptional circumstances.'"" (*People v. Lenix* (2008) 44 Cal.4th 602, 614 (*Lenix*).)

"We review a trial court's determination regarding the sufficiency of tendered justifications with "'great restraint.'" [Citation.] We presume an advocate's use of peremptory challenges occurs in a constitutional manner. [Citation.] When a reviewing court addresses the trial court's ruling on a *Batson*/*Wheeler* motion, it ordinarily reviews the issue for substantial evidence. [Citation.] A trial court's conclusions are entitled to deference only when the court made a 'sincere and reasoned effort to evaluate the nondiscriminatory justifications offered.' [Citation.] What courts should not do is substitute their own reasoning for the rationale given by the prosecutor, even if they can imagine a valid reason that would not be shown to be pretextual. '[A] prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. . . . If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.' [Citation.]" (*Gutierrez, supra,* 2 Cal.5th at p. 1159.)

In fulfilling its obligation to make a sincere and reasoned effort to evaluate the prosecutor's explanation, "the trial court is not required to make specific or detailed comments for the record to justify every instance in which a prosecutor's race-neutral reason for exercising a peremptory challenge is being accepted by the court as genuine." (*People v. Reynoso* (2003) 31 Cal.4th 903, 919.) "When the prosecutor's stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings." (*People v. Silva*, *supra*, 25 Cal.4th at p. 386.)

The prosecutor's explanation for excusing Prospective Juror No. 19 was that the prospective juror had family members who had been arrested and he believed that "the system" had treated his family members unfairly. The prosecutor was concerned that Prospective Juror No. 19's feeling about the judicial system would carry over to this case. Prospective Juror No. 19's view of "the system" was a legitimate nondiscriminatory reason for excusing him. (*People v. Roldan* (2005) 35 Cal.4th 646, 703 ["'the use of peremptory challenges to exclude prospective jurors whose relatives and/or family members have had negative experiences with the criminal justice system is not unconstitutional'"] disapproved on a different point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; *Wheeler, supra,* 22 Cal.3d at p. 277, fn. 18 ["in the case at bar the black prospective juror . . . disclosed on voir dire that he had a stepson who had been convicted of crime and was currently incarcerated. A personal experience of this nature, suffered either by the juror or a close relative, has often been deemed to give rise to a significant potential for bias against the prosecution"].)

Defendant contends the trial court improperly relied on a reason the prosecutor never gave in finding no discriminatory animus behind Prospective Juror No. 19's excusal. (See *Gutierrez, supra,* 2 Cal.5th at p. 1172 ["the [trial] court improperly cited a justification not offered by the prosecutor: a lack of life experience"].) For this contention, defendant relies on the trial court's statement in its prima facie case ruling: "And I will note that he indicated previously his family members had been, you know, mistreated by the system."

Defendant appears to argue that the trial court and not the prosecutor first conceived of the prosecutor's reason for challenging Prospective Juror No. 19. The record does not support defendant's argument. As set forth above, in first challenging Prospective Juror No. 19 for cause, the prosecutor's stated reason was the prospective juror's belief that "the system" had not treated his relatives fairly. Unsurprisingly, the prosecutor relied on the same reason in justifying her peremptory challenge of Prospective Juror No 19.

Contrary to defendant's argument, the record demonstrates that the trial court properly discharged its duty under *Batson*/*Wheeler*. Responding to the prosecutor's proffered reason for excusing Prospective Juror No. 19, the trial court stated that if it had found a prima facie case, it nevertheless would have denied defendant's *Batson*/*Wheeler* motion "because it seems there's a race-neutral basis for the exclusion." That is, it evaluated and found credible the prosecutor's reason. It was not required to do more. (*People v. Reynoso, supra,* 31 Cal.4th at p. 919; *People v. Silva, supra,* 25 Cal.4th at p. 386; see *Lenix, supra,* 44 Cal.4th at p. 614, fn. 9 ["Defendant contends the deferential standard of review is inapplicable here because the

trial court made no specific factual findings. On the contrary, the trial court credited the prosecutor's reasons for excluding C.A. and the three Hispanic panelists, finding those explanations, rather than race, were the motivation for the prosecutor's peremptory challenges"].) Because we review a trial court's determination regarding the sufficiency of a prosecutor's tendered justification for challenging a prospective juror with great restraint (*Gutierrez, supra,* 2 Cal.5th at p. 1159) and defer, in the absence of exceptional circumstances, to a trial court's determination that a prosecutor's proffered reason for excusing a juror was credible (*Lenix, supra,* 44 Cal.4th at p. 614), we hold that the trial court did not err in denying defendant's *Batson*/*Wheeler* motion.[5]

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[5] In support of his contention that the prosecutor's proffered reason for excusing Prospective Juror No. 19 was pretextual, defendant argues that the prosecutor's only challenges for cause were to Prospective Juror No. 19 and Prospective Juror No. 1, another Black prospective juror. Responding to the trial court's question if there was anything about the defendant that would prevent the prospective jurors from being fair and impartial, Prospective Juror No. 1 had said that defendant was about the same age as her son and hesitated when asked if she could return a guilty verdict. In denying the prosecutor's cause challenge to Prospective Juror No. 1, the trial court stated that the prospective juror did not say she could not be fair and the prosecutor had not followed up on the issue. That the prosecutor did not thereafter use a peremptory challenge to excuse Prospective Juror No. 1 suggests the prosecutor did not have a discriminatory animus in excusing Prospective Juror No. 19.

B. *Senate Bill 1393*

Senate Bill 1393, which became effective on January 1, 2019, amended sections 667 and 1385 to give the trial court section 1385 discretion to strike five-year sentence enhancements under section 667, subdivision (a)(1) in furtherance of justice. Defendant contends that in light of Senate Bill 1393 we must remand this matter to the trial court to allow it to exercise its section 1385 discretion whether to strike his section 667, subdivision (a)(1) enhancement. The Attorney General agrees as do we.

III. DISPOSITION

The cause is remanded to the trial court to permit the court to consider whether to exercise its discretion to strike defendant's section 667, subdivision (a)(1) enhancement under section 1385. In all other respects, the judgment is affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.